



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R09-OAR-2021-0148; FRL-10024-30-Region 9]

#### Designation of Areas for Air Quality Planning Purposes; California; San Diego County

#### Ozone Nonattainment Area; Reclassification to Severe

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is taking final action to approve a request from the State of California to reclassify the San Diego County ozone nonattainment area from “Serious” to “Severe” for the 2008 ozone National Ambient Air Quality Standards (NAAQS) and from “Moderate” to “Severe” for the 2015 ozone NAAQS. The EPA is also finalizing our action to reclassify in the same manner as state land, reservation areas of Indian country and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the boundaries of the San Diego County ozone nonattainment area. The new applicable attainment dates for the San Diego County ozone nonattainment area are as expeditious as practicable but no later than July 20, 2027, for the 2008 ozone NAAQS, and August 3, 2033, for the 2015 ozone NAAQS. With respect to Severe state implementation plan (SIP) element submittal dates that have passed, the EPA is approving a deadline of no later than 12 months from the effective date of this rule for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0148. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** T. Khoi Nguyen, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, or by email at [nguyen.thien@epa.gov](mailto:nguyen.thien@epa.gov).

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### **I. Summary of the Proposed Action**

On April 8, 2021, the EPA proposed to grant a request by the California Air Resources Board (CARB) to voluntarily reclassify the San Diego County nonattainment area from Serious to Severe<sup>1</sup> for the 2008 ozone NAAQS and from Moderate to Severe for the 2015 ozone NAAQS.<sup>2</sup>

With respect to Severe SIP element submittal dates that have passed, the EPA also

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<sup>1</sup> Throughout this document and in our proposed rule, we use the term “Severe” to refer to Severe areas that have up to 15 years to attain the ozone standards. The ozone area designation tables in 40 CFR part 81 specify “Severe-15” to distinguish such areas from “Severe-17” areas, which are Severe areas that have up to 17 years to attain the ozone standards.

<sup>2</sup> 86 FR 18227 (April 8, 2021).

proposed to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted. With respect to the section 185 fee program, upon reclassification to Severe, we indicated that the deadline for submittal would be July 20, 2022, for the 2008 ozone NAAQS and August 3, 2028, for the 2015 ozone NAAQS pursuant to the EPA's SIP Requirements Rules (SRR) for the 2008 and 2015 ozone NAAQS.<sup>3</sup> Upon reclassification, we noted that the new attainment dates for the San Diego County ozone nonattainment area would be as expeditiously as practicable, but no later than July 20, 2027, for the 2008 ozone NAAQS and August 3, 2033, for the 2015 ozone NAAQS. Further, as indicated in our proposed notice, the reformulated gasoline requirement will continue to apply within San Diego County upon reclassification to Severe.<sup>4</sup>

In addition, the EPA also proposed to reclassify reservation areas of Indian country and any other area of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the San Diego County nonattainment area as Severe nonattainment for the 2008 and 2015 ozone NAAQS.<sup>5</sup> Although eligible tribes may seek the EPA's approval of relevant tribal programs under the CAA, we noted that none of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

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<sup>3</sup> The EPA promulgated the SRR for the 2008 and 2015 ozone NAAQS at 40 CFR part 52, subpart AA and subpart CC, respectively.

<sup>4</sup> 86 FR 18227, 18229.

<sup>5</sup> The tribes are identified in 40 CFR 81.305 and 86 FR 18227, 18229: Barona Group of Capitan Grande of Mission Indians of the Barona Reservation, Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, Capitan Grande Band of Diegueno Mission Indians of California, Ewiiapaayp Band of Kumeyaay Indians, Iipay Nation of Santa Ysabel, Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, Jamul Indian Village of California, La Jolla Band of Luiseno Indians, La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, Los Coyotes Band of Cahuilla and Cupeno Indians, Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, Rincon Band of Luiseno Mission Indians of the Rincon Reservation, San Pasqual Band of Diegueno Mission Indians of California, Sycuan Band of the Kumeyaay Nation, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation.

Please see our April 8, 2021 proposed rule for additional background and a more detailed explanation of our proposed action.

## **II. Public Comments and EPA Responses**

The public comment period on the proposed rule opened on April 8, 2021, the date of its publication in the ***Federal Register***, and closed on May 10, 2021. During this period, the EPA did not receive any comments on our proposed action.

## **III. Final Action**

For the reasons discussed in detail in the proposed rule and summarized herein, the EPA is approving the request by CARB to reclassify the San Diego County ozone nonattainment area to Severe for the 2008 and 2015 ozone NAAQS. The EPA is also reclassifying reservation areas of Indian country, and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, located within the boundaries of the San Diego County ozone nonattainment area consistent with the reclassification of state lands (i.e., to Severe). Lastly, the EPA is setting a deadline for submittal of SIP revisions to address the Severe area requirements for San Diego County, to the extent that such revisions have not already been submitted, of no later than one year from the effective date of this rule.

## **IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a “significant regulatory action” and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. With respect to Indian country, reclassifications do not establish

deadlines for air quality plans or plan revisions. For these reasons, this final action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

In addition, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and that this final rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal Implications” are defined in section 1(a) of the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” Several Indian tribes have areas of Indian country located within the boundary of the San Diego County ozone nonattainment areas.

The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has concluded that this final rule might have tribal implications for the purposes of E.O. 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. This final rule does affect implementation of new source review for new or modified major stationary sources proposed to be located in the areas of Indian country that are being reclassified, and might affect projects proposed in these areas that require federal permits,

approvals, or funding. Such projects are subject to the requirements of the EPA's general conformity rule, and federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower de minimis thresholds triggered by reclassification.

Given the potential implications, the EPA contacted tribal officials early in the process of developing our proposed rule to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the 17 tribal governments representing 18 areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. On January 12, 2021, we received a response from one tribe requesting a webinar on this matter on behalf of a few tribes. We held this informational webinar on January 22, 2021. Additionally, we received responses from three tribes requesting formal government-to-government consultation. The consultation letters and the information and notes from the webinar and the three government-to-government consultations are included in the docket for this action. The EPA has carefully considered the views expressed by the tribes.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This final reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

This final action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final

action does not alter the relationship, or the distribution of power and responsibilities established in the CAA.

This final rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE ***FEDERAL REGISTER***]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.



For the reasons stated in the preamble, the EPA amends 40 CFR part 81 as follows:

## **PART 81— DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart C— Section 107 Attainment Status Designations**

2. Section 81.305 is amended by revising the entry for “San Diego County, CA” in the table titled “California - 2008 8-Hour Ozone NAAQS [Primary and Secondary],” and by revising the entry for “San Diego County, CA” in the table titled “California - 2015 8-Hour Ozone NAAQS [Primary and Secondary]” to read as follows:

#### **§ 81.305 California.**

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CALIFORNIA-2008 8-HOUR OZONE NAAQS  
[Primary and Secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
San Diego County, CA: <sup>2</sup>		Nonattainment	<b>[Insert date 30 days after date of publication in the <i>Federal Register</i>]</b>	Severe-15.
San Diego County: <sup>2</sup>				
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation <sup>3</sup>				
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation <sup>3</sup>				
Capitan Grande Band of Diegueno Mission Indians of California <sup>3</sup>				
Ewiiapaayp Band of Kumeyaay Indians <sup>3</sup>				
Iipay Nation of Santa Ysabel <sup>3</sup>				
Inaja Band of Diegueno Mission Indians of the				

Inaja and Cosmit Reservation <sup>3</sup>						
Jamul Indian Village of California <sup>3</sup>						
La Jolla Band of Luiseno Indians <sup>3</sup>						
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation <sup>3</sup>						
Los Coyotes Band of Cahuilla and Cupeno Indians <sup>3</sup>						
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation <sup>3</sup>						
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation <sup>3</sup>						
Pala Band of Luiseno Mission Indians of the Pala Reservation <sup>3</sup>						
Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation <sup>3</sup>						
Rincon Band of Luiseno Mission Indians of the Rincon Reservation <sup>3</sup>						
San Pasqual Band of Diegueno Mission Indians of California <sup>3</sup>						
Sycuan Band of the Kumeyaay Nation <sup>3</sup>						
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians <sup>3</sup>						
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<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

<sup>3</sup> Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

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## CALIFORNIA-2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
*	*	*	*	*
San Diego County, CA:		Nonattainment	<b>[Insert date 30 days after date of publication in the <i>Federal Register</i>]</b>	Severe-15.
San Diego County:				
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation.				
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation.				
Capitan Grande Band of Diegueno Mission Indians of California.				
Ewiiapaayp Band of Kumeyaay Indians.				
Iipay Nation of Santa Ysabel.				
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation.				
Jamul Indian Village of California.				
La Jolla Band of Luiseno Indians.				
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation.				
Los Coyotes Band of Cahuilla and Cupeno Indians.				
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation.				
Mesa Grande Band of Diegueno Mission				

Indians of the Mesa Grande Reservation.						
Pala Band of Luiseno Mission Indians of the Pala Reservation.						
Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation.						
Rincon Band of Luiseno Mission Indians of the Rincon Reservation.						
San Pasqual Band of Diegueno Mission Indians of California.						
Sycuan Band of the Kumeyaay Nation.						
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians.						
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<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

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